

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of new ) NOTICE OF PUBLIC  
Rules I through IX regarding ) HEARING ON PROPOSED  
definitions, education provider ) ADOPTION  
requirements, table funding, license )  
transfers and renewals, letters of )  
credit and surety bonds, revocation, )  
suspension or surrender of licenses, )  
and the complaint process, proposed )  
for adoption under the Montana )  
Mortgage Broker and Loan Originator )  
Licensing Act )

TO: All Concerned Persons

1. On March 31, 2004, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the adoption of new Rules I through IX.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on March 24, 2004, to advise us of the nature of the accommodation that you need. Please contact Susan Pendergast, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to spendergast@state.mt.us.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS For purposes of the Montana Mortgage Broker and Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(2) "Employed by" means:

(a) an individual performing a service for a mortgage broker liable for withholding taxes pursuant to Title 26 of the United States Code; or

(b) any individual acting as an independent contractor for a mortgage broker if that individual is under exclusive written agreement to broker loans only through their employing mortgage broker or if the employing mortgage broker undertakes accountability for the regulated mortgage loan activities of the independent contractor.

(3) "Fraudulent or dishonest dealings" means financial misconduct prohibited by statutes governing:

(a) mortgage brokers in this and other states; and

(b) other segments of the financial services industry, including but not limited to:

(i) securities brokerages;

(ii) banks and trust companies;

(iii) escrow offices;

(iv) title insurance companies; or

(v) other licensed or chartered financial institutions.

(4) "Initiation of an investigation" means any administrative, civil, or criminal proceeding initiated by a state, municipal or federal governmental entity, the federal home loan mortgage corporation or the federal national mortgage agency.

(5) "Material change" means:

(a) a change in the nature of the business;

(b) a change in the board of directors or the principal officers;

(c) a change in the share ownership of the company that could affect control; or

(d) the acquisition or disposition of another company.

(6) "Table funding" means the closing of a loan naming a mortgage broker or loan originator as the lender on the mortgage loan note, which note is then sold within three business days of closing to another party.

(7) "Work in a related field" means:

(a) for a mortgage broker, three years:

(i) as a mortgage broker, a branch office manager of a mortgage broker business;

(ii) as a mortgage banker, or responsible individual or branch manager of a mortgage banking business;

(iii) as a real estate loan officer;

(iv) as a branch manager of a real estate lender;

(v) as a loan originator; or

(vi) as a mortgage broker licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department; and

- (b) for a loan originator, six months:
    - (i) as a loan originator in a mortgage broker business;
    - (ii) as a loan originator in a mortgage banking business;
    - (iii) as a real estate loan officer;
    - (iv) as a loan originator licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department;
    - (v) as a real estate loan processor or clerk; or
    - (vi) as an escrow closing agent.
- AUTH: 32-9-130, MCA
- IMP: 32-9-103, 32-9-109, 32-9-115, 32-9-116, 32-9-117, 32-9-123, MCA

RULE II PROOF OF EXPERIENCE (1) Satisfactory proof of experience may include:

- (a) valid copies of W-2 or 1099 tax forms verifying employment;
- (b) valid copies of form 1120 corporate tax returns signed by the broker or manager as owner of the business; or
- (c) signed letters from a lender on the lender's letterhead verifying that the broker has competently originated loans for the required time period.

AUTH: 32-9-130, MCA

IMP: 32-9-109, MCA

RULE III TRANSFER OF LOAN ORIGINATOR LICENSE (1) To transfer a loan originator license, a loan originator shall obtain a relocation application from the department. The completed relocation application must be accompanied by a processing fee of \$50.

(a) If a license is not transferred within six months and has been canceled, a complete new application with all required information must be submitted along with the appropriate new application fees and supporting documentation.

(b) If the lapse in employment occurs over a renewal period, the loan originator license must be renewed as required by 32-9-117, MCA, to qualify for a transfer of the license. The relocation six-month time frame would remain in effect and would be from the date of termination.

(2) If a loan originator is terminated by a mortgage broker, and within six months is re-employed by the same mortgage broker, a request for reinstatement form must be filed with the department. The form will be available from the department. There will be a \$10 processing fee for reinstatement. If the break in employment occurs over a renewal period, the loan originator license must be renewed as

required by 32-9-117, MCA, to qualify for reinstatement. The six-month time frame would remain in effect and would be from the date of termination.

AUTH: 32-9-130, MCA

IMP: 32-9-116, MCA

RULE IV LICENSE RENEWAL (1) The renewal fees shall be \$300 for mortgage brokers and \$250 for loan originators. The renewal application forms will be sent by the department to each licensed mortgage broker or loan originator in April. The application must be postmarked or received by May 31.

(2) The continuing education year will be from June 1 to May 31.

(3) The renewal application must be accompanied by evidence that the continuing education requirement has been met and a recent credit report from one of the three recognized credit reporting agencies. They are experian, equifax, and transunion.

(4) Mortgage brokers must include evidence of an irrevocable letter of credit or surety bond.

(5) Mortgage brokers or loan originators shall continuously satisfy all requirements of initial licensure to be eligible for renewal. A renewal application may not be processed or granted until all required information is received.

(6) Failure to renew licenses by May 31 but before July 1 will result in a \$250 late fee per license in addition to regular renewal fees.

(7) If the attempt to renew is after June 30, the license is considered expired. Expiration terminates the right to engage in any residential mortgage broker or loan originator activities. The mortgage broker or loan originator must then apply as a new licensee.

AUTH: 32-9-130, MCA

IMP: 32-9-117, 32-9-118, 32-9-123, MCA

RULE V LICENSING EXAMINATION AND CONTINUING EDUCATION PROVIDER REQUIREMENTS (1) A licensee or applicant shall receive credit for participation in a program if it is presented by a provider approved by the department and the department has approved the program pursuant to this rule.

(2) To receive approval of a licensing or continuing education course, the course provider must file an application with the department, which includes, but is not limited to the following items:

(a) a description of the course provider's experience in teaching courses;

(b) a complete list of all instructors for the course, including their qualifications and experience teaching courses similar to the course submitted for approval;

(c) a description of each course; and

(d) all course materials and lesson plans.

(3) Courses and licensing examinations must provide prospective mortgage brokers and loan originators with a basic knowledge of and competency in the following:

(a) basics of home purchase and ownership;

(b) the mortgage industry, generally;

(c) loan evaluation and documentation;

(d) operation of a mortgage brokerage firm;

(e) features of various loan products;

(f) state and federally required disclosures;

(g) the Montana Residential Mortgage Broker and Loan Originator Licensing Act; and

(h) other state and federal laws applicable to the mortgage industry.

(4) Appropriate subjects for licensing examinations include:

(a) the Montana Residential Mortgage Broker and Loan Originator Licensing Act;

(b) state and federal consumer protection acts;

(c) the federal Real Estate Settlement Procedures Act, Truth in Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Home Mortgage Disclosure Act, Community Reinvestment Act, and the regulations promulgated pursuant to these acts;

(d) trust account and recordkeeping requirements of the Montana Residential Mortgage Broker and Loan Originator Licensing Act;

(e) real estate and appraisal law;

(f) arithmetical computation common to mortgage lending, including but not limited to:

(i) the computation of an annual percentage rate;

(ii) finance charges;

(iii) amount financed;

(iv) payment and amortization;

(v) credit evaluation; and

(vi) calculating debt-to-income; and

(g) ethics in the mortgage industry.

(5) The provider shall file an application with the department which includes a copy of any examinations to be used in determining satisfactory comprehension of the contents of the course and the grading scale to be used. Any new or revised courses, examinations or grading scales to be used shall be submitted to the department for approval at least 30

days prior to use. Course materials may be submitted in electronic format.

(6) The department shall review applications filed and determine whether to approve or deny the proposed provider. If the department approves the course or provider, the department shall issue a certificate of approval that will be effective for two years from the date of issuance.

(7) The department shall provide a list of approved providers. The list shall indicate whether a provider is approved to present licensing examination and/or continuing education programs.

(8) A course provider that desires to renew the certificate of approval must apply to the department and file the items required in (2) no later than 60 days before the certificate expires.

(9) The department may audit an approved course or examination at any time. If the course provider or examination administrator has not complied with the requirements of this rule, the department may suspend or terminate the approval and require the surrender of the certificate of approval.

(10) The department may revoke, suspend or terminate approval of any provider or individual course upon a finding that:

(a) any provider officer or employee who has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions for any purpose other than instruction;

(b) during any six-month period, fewer than 50% of the provider's program students taking the examination for the first time achieve a passing score; or

(c) the provider has not conducted at least one continuing education program during the preceding 12-month period.

(11) A provider shall designate one person as its contact person who shall be available to the department during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.

(12) Providers shall not use any words, symbols or other means to indicate that either the provider or a program has received the department's approval unless such approval has been issued and remains in effect.

(13) A licensee may not repeat a continuing education course with the same education provider within a three-year period.

(14) The fee for an initial and biennial renewal education provider application is \$350. All fees are nonrefundable and must be submitted with the application.

(15) An education course relative to commercial lending or brokering may not be used to satisfy continuing education requirements under this subchapter.

(16) An education provider shall maintain student records for three years.

AUTH: 32-9-130, MCA

IMP: 32-9-118, MCA

#### RULE VI IRREVOCABLE LETTER OF CREDIT OR SURETY BOND

(1) If using an irrevocable letter of credit, the letter of credit shall be from a financial institution acceptable to the department. The entity name on the application and on the irrevocable letter of credit must match exactly.

(2) If using a surety bond, the bond shall be issued by a surety authorized to do business in the state of Montana. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department. The entity name on the application and on the surety bond must match exactly. The bond shall be continuous and may be cancelled by the surety upon the surety giving 30 days written notice to the department of its intent to cancel the bond. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond.

(3) The department or any person injured by a violation of this act may bring an action in a court of competent jurisdiction against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator who committed the violation.

(a) An action against an irrevocable letter of credit must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

(b) In the event valid claims of borrowers and bona fide third parties against a bond or irrevocable letter of credit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or irrevocable letter of credit, without regard to the date of filing of any claim or action.

(c) A judgment arising from a violation of the Montana Mortgage Broker and Loan Originator Licensing Act or a rule adopted under that Act shall be entered for actual damages and in no case be less than the amount paid by the borrower to the licensed mortgage broker plus reasonable attorneys' fees and costs. In no event shall the surety bond or approved alternative provide payment for any trebled or punitive damages.

(d) Borrowers and bona fide third parties shall be given priority over the department and other persons in distributions in actions against the surety bond. The remedies provided under this rule are cumulative and nonexclusive and do not affect any other remedy available at law.

AUTH: 32-9-130, MCA

IMP: 32-9-123, MCA

#### RULE VII REVOCATION, SUSPENSION OR SURRENDER OF LICENSE

(1) A licensee may surrender a license by delivering to the department written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

(2) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(3) In the event of a revoked, suspended, or surrendered mortgage broker or loan originator license, no fees will be refunded by the department.

AUTH: 32-9-130, MCA

IMP: 32-9-126, MCA

RULE VIII PROHIBITION ON TABLE FUNDING (1) Any person not exempted from the Montana Mortgage Broker and Loan Originator Licensing Act under 32-9-104, MCA, who closes a mortgage loan naming themselves as the lender and who, within three days of closing, consummates sale of the mortgage loan note to another party, commonly known as "table funding," must be licensed as a mortgage broker or loan originator.

AUTH: 32-9-130, MCA



IMP: 32-9-103, 32-9-108, MCA

RULE IX CONSUMER COMPLAINT PROCESS (1) A complaint form will be provided by the department. A complaint must be submitted in writing to the department. If the basis of the complaint relates to the Montana Mortgage Broker and Loan Originator Licensing Act, it will be investigated by the department or designated party.

AUTH: 32-9-130, MCA

IMP: 32-9-130, MCA

4. The 2003 Montana Legislature enacted Senate Bill 402, which was an Act creating the Montana Mortgage Broker and Loan Originator Licensing Act. This Act has been codified in Title 32, Chapter 9, part 1, MCA. Section 32-9-130, MCA, requires the Department to adopt rules necessary to carry out the intent and purposes of the Act. New Rules I through IX are being proposed to fulfill this general legislative mandate and to address the specific rulemaking mandates of section 32-9-130(2), MCA. The Department does not know either the cumulative amount of the fees imposed by the rules or the number of persons affected by these fees because it is unknown how many mortgage brokers or loan originators there are in Montana.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Peter Funk, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to pfunk@state.mt.us, and must be received no later than April 8, 2004.

6. Peter Funk, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Susan Pendergast, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box

200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; emailed to spendergast@state.mt.us; or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

By: /s/ Steve Bender  
Steve Bender, Acting Director  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer

Certified to the Secretary of State March 1, 2004.